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HOUSE BILL 389

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCE; REMOVING INVESTMENT LIMITATIONS AND ESTABLISHING STANDARDS FOR PRUDENT INVESTMENT OF THE LAND GRANT PERMANENT FUNDS, THE SEVERANCE TAX PERMANENT FUND, THE EDUCATIONAL RETIREMENT FUND AND OF FUNDS ADMINISTERED PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-8-7 NMSA 1978 (being Laws 1957, Chapter 179, Section 7, as amended) is amended to read:

"6-8-7. POWERS AND DUTIES OF STATE INVESTMENT OFFICER-- INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and restrictions contained in policy-making regulations or resolutions adopted by the council and subject to prior

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1 authorization by the council, the state investment officer may
2 make purchases, sales, exchanges, investments and reinvestments
3 of the assets of all funds administered under the supervision
4 of the council in accordance with the Uniform Prudent Investor
5 Act. The state investment officer shall see that money
6 invested is at all times handled in the best interests of the
7 state.

8 ~~[B. Securities or investments purchased or held may~~
9 ~~be sold or exchanged for other securities and investments;~~
10 ~~provided, however, that no sale or exchange shall be at a price~~
11 ~~less than the going market at the time the securities or~~
12 ~~investments are sold or exchanged.~~

13 ~~C. In purchasing bonds, the state investment~~
14 ~~officer shall require a certified or original written opinion~~
15 ~~of a reputable bond attorney or the attorney general of the~~
16 ~~state certifying the legality of the bonds to be purchased;~~
17 ~~provided, however, this written opinion may be the approving~~
18 ~~legal opinion ordinarily furnished with the bond issue.~~

19 ~~D.]~~ B. The state investment officer shall formulate
20 and recommend to the council for approval investment
21 regulations or resolutions pertaining to the kind or nature of
22 investments and limitations, conditions and restrictions upon
23 the methods, practices or procedures for investment,
24 reinvestment, purchase, sale or exchange transactions that
25 should govern the activities of the investment office.

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1 ~~[E-]~~ C. The council shall meet at least once each
2 month, and as often as exigencies may demand, to consult with
3 the state investment officer concerning the work of the
4 investment office. The council shall have access to all files
5 and records of the investment office and shall require the
6 state investment officer to report on and provide information
7 necessary to the performance of council functions. The council
8 may hire one or more investment management firms to advise the
9 council with respect to the council's overall investment plan
10 for the investment of all funds managed by the investment
11 office and pay reasonable compensation for such advisory
12 services from the assets of the applicable funds, subject to
13 budgeting and appropriation by the legislature. The terms of
14 any such investment management services contract shall
15 incorporate the statutory requirements for investment of funds
16 under the council's jurisdiction.

17 ~~[F. For the purposes of the investment of all funds~~
18 ~~managed by the investment office, the state investment officer~~
19 ~~shall manage the funds]~~ D. All funds managed by the state
20 investment officer shall be managed in accordance with ~~[the~~
21 ~~prudent investor rule set forth in]~~ the Uniform Prudent
22 Investor Act. With the approval of the council, the state
23 investment officer may employ investment management services to
24 invest the funds and may pay reasonable compensation for
25 investment management services from the assets of the

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1 applicable funds, subject to budgeting and appropriation by the
2 legislature.

3 ~~[G.]~~ E. For funds available for investment for more
4 than one year, the state investment officer may contract with
5 any state agency to provide investment advisory or investment
6 management services, separately or through a pooled investment
7 fund, provided the state agency enters into a joint powers
8 agreement with the council and that state agency pays at least
9 the direct cost of such services. Notwithstanding any
10 statutory provision governing state agency investments, the
11 state investment officer may invest funds available from a
12 state agency pursuant to a joint powers agreement in any type
13 of investment permitted for the land grant permanent funds
14 under the prudent investor rule. In performing investment
15 services for a state agency, the council and the state
16 investment officer are exempt from the New Mexico Securities
17 Act of 1986. As used in this subsection, "state agency" means
18 any branch, agency, department, board, instrumentality,
19 institution or political subdivision of the state, the New
20 Mexico finance authority and any tax-exempt private endowment
21 entity whose sole beneficiary is a state agency.

22 F. The state investment officer shall provide
23 quarterly performance reports to the legislative finance
24 committee. Annually, the state investment officer shall ratify
25 and provide written investment policies, including any

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1 amendments, to the legislative finance committee."

2 Section 2. Section 6-8-20 NMSA 1978 (being Laws 1987,
3 Chapter 219, Section 3, as amended) is amended to read:

4 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE
5 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
6 INTEREST.--

7 A. There is created the "private equity investment
8 advisory committee" to the council. The committee consists of
9 the state investment officer, a member of the council appointed
10 by the governor and three members who are qualified by
11 competence and experience in finance and investment and
12 knowledgeable about the private equity investment process and
13 who are appointed by the governor.

14 B. Members appointed by the governor, except the
15 council member, shall be appointed for three-year terms;
16 provided that the terms of the initial committee members shall
17 be staggered so that the term of one member expires each year.
18 After the initial appointments, all governor-appointed members
19 shall be appointed for three-year terms. Members shall serve
20 until their successors are appointed. A vacancy occurring
21 other than by expiration of term shall be filled in the same
22 manner as the original appointment, but only for the unexpired
23 term.

24 C. The committee shall review and make
25 recommendations to the council on investments authorized

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1 pursuant to Sections [~~6-8-21, 7-27-5.6~~] 7-27-5.15 and
2 7-27-5.26 NMSA 1978 and all other private equity investments
3 and shall advise the council in matters and policies related to
4 such investments. The committee shall establish policies for
5 national private equity fund investments, New Mexico private
6 equity fund investments and New Mexico film private equity fund
7 investments not less often than annually and shall make copies
8 available to interested parties.

9 D. Members of the committee shall receive per diem
10 and mileage as provided for nonsalaried public officers in the
11 Per Diem and Mileage Act and shall receive no other
12 compensation, perquisite or allowance.

13 E. The committee shall elect annually a chairman
14 from among its members and may elect other officers as
15 necessary. The committee shall meet upon the call of the
16 chairman or the state investment officer.

17 F. Members of the committee are public employees
18 within the meaning of the Tort Claims Act and are entitled to
19 all immunity and indemnification provided under that act.

20 G. [~~No~~] A person [~~may~~] shall not be a member of the
21 committee if any recommendation, action or decision of the
22 committee will or is likely to result in direct, measurable
23 economic gain to that person or [~~his~~] that person's employer.

24 H. The state investment officer may enter into
25 contracts with investment advisors for private equity fund

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1 investments and film fund investments authorized pursuant to
2 Sections [~~6-8-21, 7-27-5.6~~] 7-27-5.15 and 7-27-5.26 NMSA 1978
3 and all other private equity investments and may pay budgeted
4 expenses for the advisors from the assets of any fund
5 administered under the supervision of the council, as
6 applicable.

7 I. As used in this section, "private equity
8 investments" means any legal entity that has as its primary
9 business activity the investment of funds in return for equity
10 in or debt of businesses for the purpose of providing capital
11 for startup, expansion, new product development,
12 recapitalization or a similar business purpose."

13 Section 3. Section 7-27-5 NMSA 1978 (being Laws 1983,
14 Chapter 306, Section 7, as amended) is amended to read:

15 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--The
16 severance tax permanent fund shall be invested [~~for two general~~
17 ~~purposes, to provide income to the fund and to stimulate the~~
18 ~~economy of New Mexico, preferably on a continuing basis. The~~
19 ~~investments in Sections 7-27-5.1 and 7-27-5.6 NMSA 1978 shall~~
20 ~~be those intended to provide maximum income to the fund and~~
21 ~~shall be referred to as the market rate investments. The~~
22 ~~investments] in separate differential rate and market rate
23 investment classes. "Differential rate investments" are
24 permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13
25 through 7-27-5.17, 7-27-5.22 and 7-27-5.24 through 7-27-5.26~~

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1 NMSA 1978 [~~shall be those~~] and are intended to stimulate the
2 economy of New Mexico and [~~shall be referred to as the~~
3 ~~differential rate investments. The prudent man rule shall be~~
4 ~~applied to the market rate investments, and the state~~
5 ~~investment officer shall keep separate records of the earnings~~
6 ~~of the market rate investments. All transactions entered into~~
7 ~~on or after July 1, 1991~~] to provide income to the severance
8 tax permanent fund. "Market rate investments" are investments
9 that are not differential rate investments and shall be
10 invested in accordance with the Uniform Prudent Investor Act
11 and shall be accounted for in accordance with generally
12 accepted accounting principles."

13 Section 4. Section 10-11-132 NMSA 1978 (being Laws 1987,
14 Chapter 253, Section 132, as amended) is amended to read:

15 "10-11-132. INVESTMENT OF FUNDS [~~TYPES OF INVESTMENTS~~]
16 ~~PRUDENT INVESTOR STANDARD--INDEMNIFICATION OF BOARD MEMBERS.--~~

17 The funds created by the state retirement system acts are trust
18 funds of which the retirement board is trustee. Members of the
19 retirement board jointly and individually shall be indemnified
20 by the state from the funds [~~by the state~~] administered by the
21 retirement board from all claims, demands, suits, actions,
22 damages, judgments, costs, charges and expenses, including
23 court costs and attorney fees and against all liability losses
24 and damages of any nature [~~whatsoever~~] that members shall or
25 may [~~at any time~~] sustain by reason of any decision made in the

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1 performance of their duties pursuant to the state retirement
2 system acts. [~~The retirement board may invest and reinvest the~~
3 ~~funds in the following classes of securities and investments:~~

4 A. ~~bonds, notes or other obligations of the United~~
5 ~~States treasury or those guaranteed by or for which the credit~~
6 ~~of the United States government is pledged for the payment of~~
7 ~~the principal and interest;~~

8 B. ~~bonds, notes or other obligations of a~~
9 ~~municipality or other political subdivision of this state that~~
10 ~~are registered by the United States securities and exchange~~
11 ~~commission, are publicly traded and are issued pursuant to a~~
12 ~~law of this state if the issuer, within ten years prior to~~
13 ~~making the investment, has not been in default in payment of~~
14 ~~any part of the principal or interest on any debt evidenced by~~
15 ~~its bonds, notes or other obligations. If any bonds are~~
16 ~~municipal or county utility revenue bonds or utility district~~
17 ~~revenue bonds, the revenues of the utility, except for~~
18 ~~operation and maintenance expenses, shall be pledged wholly to~~
19 ~~the payment of the interest and principal of the indebtedness~~
20 ~~and the utility project shall have been completely self-~~
21 ~~supporting for a period of five years next preceding the date~~
22 ~~of investment;~~

23 C. ~~stocks, bonds, debentures or other obligations~~
24 ~~issued by any agency or corporation of the United States~~
25 ~~government under the authority of acts of the United States~~

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1 congress;

2 ~~D. collateralized obligations held in trust that:~~

3 ~~(1) are publicly traded and are registered~~
4 ~~with the United States securities and exchange commission; and~~

5 ~~(2) have underlying collateral that is either~~
6 ~~an obligation of the United States government or else has a~~
7 ~~credit rating above or equal to BBB according to the Standard~~
8 ~~and Poor's rating system or Baa according to the Moody's~~
9 ~~investors rating system;~~

10 ~~E. bonds, notes, commercial paper or other~~
11 ~~obligations of any corporation organized and operating within~~
12 ~~the United States; provided that the securities shall have a~~
13 ~~minimum credit rating of B according to the Standard and Poor's~~
14 ~~rating system or B according to the Moody's investors rating~~
15 ~~system or their equivalents; and provided that not more than~~
16 ~~ten percent of the funds for which the retirement board is~~
17 ~~trustee shall at any one time be invested in debt obligations~~
18 ~~of corporations with a credit rating less than BBB according to~~
19 ~~the Standard and Poor's rating system or Baa according to the~~
20 ~~Moody's investors rating system of their equivalents;~~

21 ~~F. preferred stock, common stock, any security~~
22 ~~convertible to common stock or American depository receipts~~
23 ~~that are registered by the United States securities and~~
24 ~~exchange commission of any corporation organized and operating~~
25 ~~within the United States whose securities are listed on at~~

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1 ~~least one stock exchange that has been approved by or is~~
2 ~~controlled by the United States securities and exchange~~
3 ~~commission or on the national association of securities dealers~~
4 ~~national market; provided that the corporations shall have~~
5 ~~minimum shareholders' equity of twenty-five million dollars~~
6 ~~(\$25,000,000) and that the funds of which the retirement board~~
7 ~~is trustee shall not be invested in more than ten percent of~~
8 ~~the voting stock of a company; and further provided that~~
9 ~~investing with enhanced index managers using futures and~~
10 ~~options is permitted solely for the purpose of adding~~
11 ~~incremental value and controlling risk and not for speculation;~~

12 ~~G. obligations of non-United States governmental or~~
13 ~~quasi-governmental entities, and these may be denominated in~~
14 ~~foreign currencies; obligations, including but not limited to~~
15 ~~bonds, notes or commercial paper of any corporation organized~~
16 ~~outside of the United States, and these may be denominated in~~
17 ~~foreign currencies; or preferred stock or common stock of any~~
18 ~~corporation organized outside of the United States whose~~
19 ~~securities are listed on at least one national or foreign stock~~
20 ~~exchange or are traded in an over-the-counter market, and these~~
21 ~~may be denominated in foreign currencies. Currency~~
22 ~~transactions, including spot or cash basis currency~~
23 ~~transactions, forward contracts and buying or selling options~~
24 ~~or futures on foreign currencies, shall be permitted but only~~
25 ~~for the purposes of hedging foreign currency risk and not for~~

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1 speculation;

2 ~~H. stocks or shares of a diversified investment~~
3 ~~company registered under the federal Investment Company Act of~~
4 ~~1940, provided that the investment company has total assets~~
5 ~~under management of at least one hundred million dollars~~
6 ~~(\$100,000,000); individual, common or collective trust funds of~~
7 ~~banks or trust companies, provided that the investment manager~~
8 ~~has assets under management of at least one hundred million~~
9 ~~dollars (\$100,000,000); provided that the board may allow~~
10 ~~reasonable administrative and investment expenses to be paid~~
11 ~~directly from the income or assets of these investments;~~

12 ~~I. contracts, including contracts through its~~
13 ~~designated agent, for the temporary exchange of securities for~~
14 ~~the use by broker-dealers, banks or other recognized~~
15 ~~institutional investors, for periods not to exceed one year,~~
16 ~~for a specified fee or consideration; provided no such~~
17 ~~contracts shall be entered into unless the contracts are fully~~
18 ~~secured by a collateralized, irrevocable letter of credit~~
19 ~~running to the retirement board, cash or equivalent collateral~~
20 ~~of at least one hundred two percent of the market value of the~~
21 ~~securities plus accrued interest temporarily exchanged, which~~
22 ~~collateral shall be delivered to the state fiscal agent or its~~
23 ~~designee contemporaneously with the transfer of funds or~~
24 ~~delivery of the securities; and further provided that such~~
25 ~~contracts may authorize the retirement board to invest cash~~

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1 ~~collateral in instruments or securities that are authorized~~
2 ~~investments for the funds and may authorize payment of a fee~~
3 ~~from the funds or from income generated by the investment of~~
4 ~~cash collateral to the borrower of securities providing cash as~~
5 ~~collateral, and the retirement board may apportion income~~
6 ~~derived from the investment of cash collateral to pay its agent~~
7 ~~in securities lending transactions; and~~

8 ~~J. contracts for the present purchase and resale at~~
9 ~~a specified time in the future, not to exceed one year, of~~
10 ~~specific securities at specified prices at a price differential~~
11 ~~representing the interest income to be earned by the retirement~~
12 ~~board. No such contract shall be entered into unless the~~
13 ~~contract is fully secured by obligations of the United States,~~
14 ~~or other securities backed by the United States, having a~~
15 ~~market value of at least one hundred two percent of the amount~~
16 ~~of the contract. The collateral required in this section shall~~
17 ~~be delivered to the state fiscal agent or his designee~~
18 ~~contemporaneously with the transfer of funds or delivery of the~~
19 ~~securities, at the earliest time industry practice permits, but~~
20 ~~in all cases settlement shall be on a same day basis. No such~~
21 ~~contract shall be entered into unless the contracting bank,~~
22 ~~brokerage firm or recognized institutional investor has a net~~
23 ~~worth in excess of five hundred million dollars~~
24 ~~(\$500,000,000).] The retirement board shall invest and reinvest~~
25 ~~the funds in accordance with the Uniform Prudent Investor Act."~~

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1 Section 5. Section 10-11-133 NMSA 1978 (being Laws 1987,
2 Chapter 253, Section 133, as amended) is amended to read:

3 "10-11-133. INVESTMENT OF FUNDS--PRUDENT INVESTOR
4 STANDARD--CONDITIONS.--

5 A. Commissions paid for the purchase and sale of
6 any security shall not exceed brokerage rates prescribed and
7 approved by stock exchanges that have been approved by or are
8 under the control of the United States securities and exchange
9 commission or by industry practice.

10 ~~[B. Investments of money from any fund of the~~
11 ~~association shall be made with the exercise of that degree of~~
12 ~~judgment and care, under the circumstances then prevailing,~~
13 ~~that persons of prudence, discretion and intelligence exercise~~
14 ~~in the management of their own affairs, not for speculation but~~
15 ~~for investment, considering the probable safety of their~~
16 ~~capital as well as the probable income to be derived. All~~
17 ~~purchases of securities shall be made at or below the current~~
18 ~~market price at the time of purchase.]~~

19 B. The retirement board shall invest and manage the
20 funds administered by the retirement board in accordance with
21 the Uniform Prudent Investor Act.

22 C. The retirement board shall provide quarterly
23 performance reports to the legislative finance committee and
24 the department of finance and administration. Annually, the
25 retirement board shall ratify and provide its written

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1 investment policy, including any amendments, to the legislative
2 finance committee and the department of finance and
3 administration.

4 ~~[G-]~~ D. Securities purchased with money from or
5 held for any fund administered by the retirement board and for
6 which the retirement board is trustee shall be in the custody
7 of the state treasurer who shall, at the direction of the
8 retirement board, deposit with a bank or trust company the
9 securities for safekeeping or servicing.

10 ~~[D-]~~ E. The retirement board may consult with the
11 state investment council or state investment officer and
12 request information or advice with respect to the retirement
13 board's overall investment plan, may utilize the services of
14 the state investment council and state investment officer and
15 may act on their advice concerning the plan. The state
16 investment council and state investment officer shall render
17 investment services to the retirement board without expense to
18 the retirement board. The retirement board may also employ the
19 investment management services and related management services
20 of a trust company or national bank exercising trust powers or
21 of an investment counseling firm or brokers for the purchase
22 and sale of securities, commission recapture and transitioning
23 services and may pay reasonable compensation for such services
24 from funds administered by the retirement board. The terms of
25 any such investment management services contract shall

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1 incorporate the statutory requirements for investment of funds
2 under the retirement board's jurisdiction.

3 ~~[E.]~~ F. Except as provided in the Public Employees
4 Retirement Act, ~~[no]~~ a member of the retirement board, employee
5 of the retirement board or any person connected with the
6 retirement board in any manner shall not:

7 (1) have any direct or indirect interest in
8 the gains or profits of any investment made by the retirement
9 board;

10 (2) receive any direct or indirect pay or
11 emolument for services provided to the retirement board or the
12 association;

13 (3) directly or indirectly, for the member,
14 employee or person, for themselves or as agent or partner of
15 others, borrow any of the funds or deposits of the association
16 or in any manner use them except to make current and necessary
17 payments authorized by the retirement board; or

18 (4) become an endorser or surety or become in
19 any manner an obligor for money of the retirement board loaned
20 or borrowed."

21 Section 6. Section 22-11-13 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 137, as amended) is amended to read:

23 "22-11-13. ~~[INVESTMENT OF]~~ BOARD AUTHORITY TO INVEST THE
24 FUND--PRUDENT INVESTOR STANDARD--INDEMNIFICATION OF BOARD.--

25 ~~[A. The board is authorized to invest or reinvest~~

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1 ~~the fund and may invest the fund only in the following:~~

2 ~~(1) obligations, including but not limited to~~
3 ~~bills, bonds or notes of the United States, United States~~
4 ~~government-sponsored enterprises or federal agency securities;~~

5 ~~(2) obligations, including but not limited to~~
6 ~~bills, bonds and notes of governments other than the United~~
7 ~~States or their political subdivisions, agencies or~~
8 ~~instrumentalities, and these may be denominated in foreign~~
9 ~~currencies;~~

10 ~~(3) obligations, including but not limited to~~
11 ~~bonds or notes of a municipality or political subdivision of~~
12 ~~the state that were issued pursuant to law; provided the issuer~~
13 ~~has not, within ten years prior to making the investment, been~~
14 ~~in default for more than three months in the payment of any~~
15 ~~part of the principal or interest on any debt evidenced by its~~
16 ~~bonds, notes or obligations; and provided the bonds are city or~~
17 ~~county utility, or utility-district revenue bonds with the~~
18 ~~revenue of such utility, other than for payment of operation~~
19 ~~and maintenance expenses, pledged wholly to payment of the~~
20 ~~interest on and the principal of such indebtedness, and the~~
21 ~~utility project has been completely self-supporting for a~~
22 ~~period of five years preceding the date of the investment;~~

23 ~~(4) contracts for the present purchase and~~
24 ~~resale at a specified time in the future, not to exceed one~~
25 ~~year, of specific securities at specified prices at a price~~

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1 ~~differential representing the interest income to be earned by~~
2 ~~the board. No such contract shall be entered into unless the~~
3 ~~contract is fully secured by obligations of the United States,~~
4 ~~or other securities backed by the United States, having a~~
5 ~~market value of at least one hundred two percent of the amount~~
6 ~~of the contract. The collateral required in this section shall~~
7 ~~be delivered to the state fiscal agent or his designee~~
8 ~~contemporaneously with the transfer of funds or delivery of the~~
9 ~~securities, at the earliest time industry practice permits, but~~
10 ~~in all cases settlement shall be on a same-day basis. No such~~
11 ~~contract shall be entered into unless the contracting bank,~~
12 ~~brokerage firm or recognized institutional investor has a net~~
13 ~~worth in excess of five hundred million dollars (\$500,000,000);~~
14 ~~(5) obligations, including but not limited to~~
15 ~~bonds, notes, debentures, instruments, conditional sales~~
16 ~~agreements, securities or other evidence of indebtedness of any~~
17 ~~corporation, partnership or trust organized within the United~~
18 ~~States; preferred stock or common stock or any security~~
19 ~~convertible to common stock of any corporation, partnership or~~
20 ~~trust organized within the United States whose securities are~~
21 ~~listed on at least one national stock exchange or on the~~
22 ~~N.A.S.D. national market or American depositary receipts of any~~
23 ~~corporation organized outside the United States whose~~
24 ~~securities are listed on at least one national stock exchange~~
25 ~~or on the N.A.S.D. national market; provided that the fund~~

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1 ~~shall not at any one time own more than ten percent of the~~
2 ~~voting stock of a company;~~

3 ~~(6) prime bankers' acceptances issued by money~~
4 ~~center banks;~~

5 ~~(7) obligations, including but not limited to~~
6 ~~bonds, notes, debentures, instruments, conditional sales~~
7 ~~agreements, securities or other evidence of indebtedness of any~~
8 ~~corporation, partnership or trust organized outside of the~~
9 ~~United States, and these may be denominated in foreign~~
10 ~~currencies; preferred stock or common stock or any security~~
11 ~~convertible to common stock of any corporation, partnership or~~
12 ~~trust organized outside of the United States whose securities~~
13 ~~are listed on at least one national or foreign stock exchange,~~
14 ~~and these may be denominated in foreign currencies; provided~~
15 ~~that the fund shall not at any one time own more than ten~~
16 ~~percent of the voting stock of a company;~~

17 ~~(8) currency transactions, including spot or~~
18 ~~cash basis currency transactions, forward currency contracts~~
19 ~~and buying or selling options or futures on foreign currencies,~~
20 ~~but only for the purposes of hedging foreign currency risk and~~
21 ~~not for speculation;~~

22 ~~(9) stocks or shares of a diversified~~
23 ~~investment company registered under the Investment Company Act~~
24 ~~of 1940, as amended, which invests primarily in United States~~
25 ~~or non-United States fixed income securities, equity securities~~

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1 ~~or short-term debt instruments pursuant to Paragraphs (1), (2),~~
2 ~~(4), (5) and (7) of this subsection, provided that the~~
3 ~~investment company has total assets under management of at~~
4 ~~least one hundred million dollars (\$100,000,000); individual,~~
5 ~~common or collective trust funds of banks or trust companies,~~
6 ~~which invest primarily in United States or non-United States~~
7 ~~fixed income securities, equity securities or short-term debt~~
8 ~~instruments pursuant to Paragraphs (1), (2), (4), (5) and (7)~~
9 ~~of this subsection, provided that the investment manager has~~
10 ~~assets under management of at least one hundred million dollars~~
11 ~~(\$100,000,000); the board may allow reasonable administrative~~
12 ~~and investment expenses to be paid directly from the income or~~
13 ~~assets of these investments; or~~

14 ~~(10) industrial revenue bonds issued pursuant~~
15 ~~to the Industrial Revenue Bond Act, where both the principal~~
16 ~~and interest of the bonds are fully and unconditionally~~
17 ~~guaranteed by a lease agreement executed by a corporation~~
18 ~~organized and operating within the United States and has issued~~
19 ~~securities traded on one or more national stock exchanges and~~
20 ~~where the senior securities of the guaranteeing corporation~~
21 ~~would have the equivalent of a BAA rating.]~~

22 A. The board is authorized to invest or reinvest
23 the fund in accordance with the Uniform Prudent Investor Act.

24 B. The board shall provide quarterly performance
25 reports to the legislative finance committee and the department

1 of finance and administration. Annually, the board shall
2 ratify and provide its written investment policy, including any
3 amendments, to the legislative finance committee and the
4 department of finance and administration.

5 ~~[B-]~~ C. The board or its designated agent may enter
6 into contracts for the temporary exchange of securities for the
7 use by broker-dealers, banks or other recognized institutional
8 investors, for periods not to exceed one year, for a specified
9 fee or consideration. ~~[No]~~ Such a contract shall not be
10 entered into unless the contract is fully secured by a
11 collateralized, irrevocable letter of credit running to the
12 board, cash or equivalent collateral of at least one hundred
13 two percent of the market value of the securities plus accrued
14 interest temporarily exchanged. This collateral shall be
15 delivered to the state fiscal agent or its designee
16 contemporaneously with the transfer of funds or delivery of the
17 securities. Such contract may authorize the board to invest
18 cash collateral in instruments or securities that are
19 authorized fund investments and may authorize payment of a fee
20 from the fund or from income generated by the investment of
21 cash collateral to the borrower of securities providing cash as
22 collateral. The board may apportion income derived from the
23 investment of cash collateral to pay its agent in securities
24 lending transactions.

25 ~~[C-]~~ D. Commissions paid for the purchase or sale

.152799.3

underscored material = new
[bracketed material] = delete

1 of any securities pursuant to the provisions of the Educational
2 Retirement Act shall not exceed brokerage rates prescribed and
3 approved by national stock exchanges or by industry practice.

4 ~~[D. Investment of the fund shall be made with the~~
5 ~~exercise of that degree of judgment and care, under the~~
6 ~~circumstances then prevailing, which men of prudence,~~
7 ~~discretion and intelligence exercise in the management of their~~
8 ~~own affairs, not for speculation but for investment,~~
9 ~~considering the probable safety of their capital as well as the~~
10 ~~probable income to be derived.]~~

11 E. Securities purchased for the fund shall be held
12 in the custody of the state treasurer. At the direction of the
13 board, the state treasurer shall deposit with a bank or trust
14 company the securities for safekeeping or servicing.

15 F. The board may consult with the state investment
16 council or the state investment officer; may request from the
17 state investment council or the state investment officer any
18 information, advice or recommendations with respect to
19 investment of the fund; may utilize the services of the state
20 investment council or the state investment officer; and may act
21 upon any advice or recommendations of the state investment
22 council or the state investment officer. The state investment
23 council or the state investment officer shall render investment
24 advisory services to the board upon request and without expense
25 to the board. ~~[The board may employ investment advisory~~

.152799.3

underscoring material = new
[bracketed material] = delete

1 ~~services and pay reasonable compensation from the fund for the~~
2 ~~services. The board may also employ investment management~~
3 ~~services and pay reasonable compensation from the fund for the~~
4 ~~services to make investment decisions on behalf of the board,~~
5 ~~within the investment objectives, policies and operating~~
6 ~~guidelines as directed by the board to the investment manager.]~~

7 The board may also employ the investment management services
8 and related management services of a trust company or national
9 bank exercising trust powers or of an investment counseling
10 firm or brokers for the purchase and sale of securities,
11 commission recapture and transitioning services and may pay
12 reasonable compensation for those services from funds
13 administered by the board.

14 G. Members of the board, jointly and individually,
15 shall be indemnified from the fund by the state from all
16 claims, demands, suits, actions, damages, judgments, costs,
17 charges and expenses, including court costs and ~~[attorneys']~~
18 attorney fees, and against all liability, losses and damages of
19 any nature whatsoever that members shall or may at any time
20 sustain by reason of any decision made in the performance of
21 their duties pursuant to this section."

22 Section 7. REPEAL.--

23 A. Sections 6-8-9, 6-8-17 through 6-8-19 and 6-8-21
24 NMSA 1978 (being Laws 1957, Chapter 179, Section 9, Laws 1970,
25 Chapter 2, Sections 1 and 2, Laws 1987, Chapter 126, Section 1

.152799.3

underscoring material = new
~~[bracketed material] = delete~~

1 and Laws 1997, Chapter 183, Section 5, as amended) are
2 repealed.

3 B. Sections 7-27-5.1, 7-27-5.6, 7-27-5.16,
4 7-27-5.23 and 7-27-5.25 NMSA 1978 (being Laws 1983, Chapter
5 306, Section 8, Laws 1987, Chapter 219, Section 2, Laws 1990,
6 Chapter 127, Section 10, Laws 1997, Chapter 45, Section 3 and
7 Laws 2000, Chapter 5, Section 4, as amended) are repealed.

8 Section 8. ACT NOT SEVERABLE.--If any part or application
9 of this act is held invalid, the remainder or its application
10 to other situations or persons shall likewise be invalid. The
11 provisions of this act are not severable.

12 Section 9. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2005.